

KAUA'I PLANNING COMMISSION
REGULAR MEETING
February 12, 2019

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Mahoney at 9:18 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Mr. Sean Mahoney
Ms. Glenda Nogami Streufert
Mr. Roy Ho
Ms. Donna Apisa (*left at 11:27 a.m.*)
Mr. Kimo Keawe
Mr. Elesther Calipjo

Absent and Excused:
Ms. Kanoe Ahuna

The following staff members were present: Planning Department – Director Ka'āina Hull, Chance Bukoski, Jody Galinato, Dale Cua, and Planning Commission Secretary Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Nicholas Courson Office of Boards and Commissions – Administrative Specialist Anela Segreti, Support Clerk Arleen Kuwamura

CALL TO ORDER

Chair Mahoney called the meeting to order at 9:18 a.m.

ROLL CALL

Planning Director Ka'āina Hull: Good morning, Chair and members of the Commission. The first order of business is roll call. Commissioner Calipjo.

Mr. Calipjo: Here.

Mr. Hull: Commissioner Keawe.

Mr. Keawe: Here.

Mr. Hull: Commissioner Apisa.

Ms. Apisa: Here.

Mr. Hull: Commissioner Ho.

Mr. Ho: Here.

Mr. Hull: Commissioner Streufert

Ms. Streufet: Here.

Mr. Hull: Chair Mahoney.

Chair Mahoney: Here.

Mr. Hull: Chair, we have a Quorum

APPROVAL OF AGENDA

Mr. Hull: Next order of business is the Approval of the Agenda. The Department request two amendments, one just a house keeping issue concerning agenda Item F.2, the Department will be submitting supplemental reports 2, 3, and 4, and those are primarily communications to the Commission. And we also request in the interest of time that agenda Item K.1, Subdivision right before agenda Item F.3., Public Continued Public Hearing, and that agenda Item L.2., Anini Hale, be placed just before agenda Item I.5

Chair Mahoney: The Chair will entertain a motion for approval of amended agenda.

Ms. Nogami Streufert: I move to accept the amended agenda

Ms. Apisa: Seconded.

Chair Mahoney: It's been moved and seconded. Any further discussions? Hearing none? All in favor signify by saying aye? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

MINUTES of the meeting(s) of the Planning Commission

Meeting of January 8, 2019

Mr. Hull: The next agenda item is for – minutes for the meeting of January 8, 2019.

Chair Mahoney: Chair will entertain a motion for approval of the minutes?

Mr. Apisa: Motion to approve the January 8, 2019 minutes.

Mr. Keawe: Seconded.

Chair Mahony: It's been moved and seconded. Any further discussion? Hearing none? All in favor signify by saying aye? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

RECEIPT OF ITEMS FOR THE RECORD

There were no items to receive for the record

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing

Mr. Hull: The next agenda item is Hearings and Public comments. Individuals may orally testify on Items on this agenda during this public comment period. Are there any members of the public that would like to testify on any of the agenda Items at this point? Seeing none.

Class IV Zoning Permit Z-IV-2019-4, Use Permit U-2019-2, and Special Permit SP-2019-3, to demolish and replace the existing water tank with a new 0.5 MG tank on a parcel situated on the makai side of Kuhio Highway in Moloaa, approx. 1,500 ft. north of the Koolau Road/Kuhio Highway intersection, further identified as Tax Map Key: (4) -4-9-009:009, and affecting a portion of a larger parcel containing an area approx.. 1.882 acres in size = Moloaa Irrigation Cooperative (MIC). [Director's Report received 10/9/18, Deferred to 1/8/19 on 10/23/18, deferred 1/8/19.]

Mr. Hull: Next agenda Item is F.1, Continued Agency Hearing. Class IV Zoning Permit Z-IV-2019-4, Use Permit U-2019-2, and Special Permit SP-2019-3 to demolish an replace the existing water tank with a new 0.5 MG tank on a parcel situated on the makai side of Kuhio Highway in Moloaa, approx. 1,500 ft. north of the Koolau Road/Kuhio Highway intersection, further identified as Tax Map Keys: (4)- 4-9-009:009, and affecting a portion of a larger parcel containing an area approx. 1.882 acres in size= Moloaa Irrigation Cooperative (MIC). Are there any members of the public wanting to testify on this agenda Item? We will bring this up later on. We have received additional communications from both party's requesting a deferral again on this Item, so the Department will recommend keeping this Agency Hearing Open.

Chair Mahoney: We need a motion to defer.

Mr. Hull: Yes.

Ms. Apisa: I move that we defer the continued agency hearing to...

Ms. Nogami Streufert: Do we need a date on this?

Mr. Hull: The deferral can be open ended quite honestly. If the commission would like to impose a date that's fine but.

Ms. Apisa: No. I'm ok, my motion is to keep it open.

Mr. Ho: Kaaina, if we should choose not to defer, so that applicant would have to what? Go back to permitting again?

Mr. Hull: No. So what's on the case for this one is that there has been a petition to intervene, and it's essentially whether or not you would grant intervention status, prior to actually reviewing the actual application? So arguably, if the Commission wanted to move on it today, you would have to have to take action intervention status and then if intervention status is given,

we would have to set up the dates for those hearings. If it isn't given, we could argue conceivably review the application today and take action on it.

Ms. Apisa: Since both parties are in agreement and wanting to defer, I would keep my motion on the floor that we defer.

Mr. Keawe: Yes.

Chair Mahoney: OK. There is a motion on the floor to defer is there a second?

Mr. Ho: seconded.

Chair Mahoney: It's been moved and seconded. Any further discussion? Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0.

New Agency Hearing

Class IV Zoning Permit Z-IV-2019-10, and Special Management Use Permit SMA(U) - 2019-4 to allow renovations to the existing hotel facility that included a new courtyard, pool and recreation area, and associated site improvements on a parcel located along the makai side of Aleka Loop in Waipouli, situated approx. 400 ft. south of its intersection with Kuhio Highway, further identified as 650 Aleka Loop, Tax Map Key: 4-3-007:028, and affecting a total area of 10.377 acres = KHS, LLC. [Director's Report received 1/22/19].

Mr. Hull: The next Agency Hearing is F.2., New Agency Hearing. Class IV Zoning Permit Z-IV- 2019-10, and Special Management Use Permit SMA (U)-2019-4 to allow renovations to the existing hotel facility that includes a new courtyard, pool an recreation area, and associated sited improvements on a parcel located along the makai side of Aleka Loop in Waipouli, situated approx. 400 ft. south of its intersection with Kuhio Highway, further identified as 650 Aleka Loop, Tax Map Key: 4-3-007:028, and affecting a total area of 10.377 acres = KHS, LLC. Are there any members from the public here to testify on this agenda Item?

New Public Hearing

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Chair Mahoney: Could you come up and state your name for the record, please.

Mr. Thomas Christy: My name is Thomas Christy. I am a board member of Kauai Path, Ke Ala Hele Makalae. And we would like to point out that we support this issue with the Marriot Court yard and we think that this is a very fortunate opportunity for the County of Kauai. The reason we say that is, we propose that it would be a tremendous and beneficial act for the Marriot Courtyard and Ke Ala Hele Makalae, which is the multi-use path system is connecting the communities along Kauai's Royal Coconut Coast. This fortunate opportunity will help us significantly advance the path and Kauai path proposes that would be tremendously beneficial to

the Marriot Courtyard, the community, and all the Royal Coconut Coast to collaborate with the County on this issue. One of the ways they could collaborate is by donating the land of the paths by whatever legal instrument is deemed. Also, adding to the scope of their work a proposed renovations to the construction of 700 linear ft. of a new multi-use path in front of that area. That path would be in adherence with the designed standards established for Ke Ala Hele Makalea. This area the Royal Coconut Coast has experienced tremendous growth, visitor destination areas as well as access to golf, beaches, shopping etc. The exemplary award winning path and the Americans with disabilities Act. This path is compliant with these activities. Mr. Lyle Tabata, Deputy County Engineer, Department of Public Works...

Mr. Hull: Three minutes Mr. Chair.

Chair Mahoney: You know generally you have three minutes and your three minutes...if you could wrap it up please, that would be great thank you.

Mr. Christy: I will wrap it up real quickly. Mr. Tabata has recommended in his application and review that this will enable the County to establish an 80/20 ratio from the Federal Government. For example, if a \$100,000 is the value of the land and the construction, the County of Kauai would receive \$400,000 in funds from the Federal Government. I thank you for the opportunity to speak before the Commission and thank you for all you do for the County and its people.

Chair Mahoney: Thank you very much for your testimony.

Mr. Hull: Any other members of the public that would like to speak on this agenda Item? Seeing none the Department will recommend closing the agency hearing.

Chair Mahoney: the Chair will entertain a motion to close the hearing.

Mr. Keawe: Move to close this hearing.

Ms. Apisa: Seconded

Chair Mahoney: OK. It's been moved and seconded. Any further discussion. Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0.

New Agency Hearing

Class IV Zoning Permit Z-IV-2019-11, Use Permit U-2019-8 to facilitate improvements to the existing emergency power facility and Variance Permit V-2019-3 to deviate from the maximum height and building setback requirements within the Residential zoning district on a parcel located along the eastern side of Kuhio Highway in Lihue, situated approx. 450 ft. east of the Kuhio Highway/Kuene Road intersection, further identified as 3-3420 Kuhio Highway, Tax Map Key: 3-7-001:030, and affecting a portion of a larger parcel approx. 43.927 acres in size= Wilcox Medical Center. [Director's Report received 1/22/19].

Mr. Hull: Next agenda Item is New Agency Hearing for Class IV Zoning Permit Z-IV-2019-11, Use Permit U-2019-8 to facilitate improvement to the existing emergency power facility and Variance Permit V-2019-3 to deviate from the maximum height and building setback requirements within the Residential zoning district on a parcel located along the eastern side of Kuhio Highway in Lihue, situated approx. 450 ft. east of the Kuhio Highway/Kuene Road intersection, further identified as 3-3420 Kuhio Highway, Tax Map Key: 3-7-001:030, and affecting a portion of a larger parcel approx. 43.927 acres in size = Wilcox Medical Center. Got any members of the public here to testify on this agenda Item? Seeing none. The Department will recommend closing the agency hearing.

Chair Mahoney: the Chair will entertain a motion to close the hearing.

Ms. Apisa: I move we close the agency hearing.

Ms. Nogami Streufert: Seconded.

Chair Mahoney: OK. It's been moved and seconded. Any further discussion. Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0.

COMMITTEE REPORTS

Subdivision

Mr. Hull: Next agenda Item as amended K.1., Subdivision. This is the Subdivision part

Chair Mahoney: Do we have a report from the Subdivision Committee please?

Mr. Ho: Yes. Several Items on the agenda for this morning. Tentative Subdivision Map approval, Kukui'ula Development Company, Ahe Group, those were granted 2:0. Final Subdivision Map Approval was for A & B Properties, McBryde & Kukui'ula Development, Mederios Farms, Kukui'ula Development, and the Nakamatsu Family, all were approved 2:0.

Chair Mahoney: Your recommendation?

Mr. Ho: I recommend that you accept the minutes of the Subdivision Committee.

Ms. Apisa: Seconded.

Chair Mahoney: OK. It's been moved and seconded. Is there any further discussions. Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0. Report accepted. Thank you.

Continued Public Hearing

There was no continued public hearing.

GENERAL BUSINESS MATTERS

Consideration of Time Extension for the construction of a third residence on a parcel and Amendment to add swimming pool on Tax Map Key 2-8-027:023, located at the terminus of Nalo Road, approx. 600 ft. mauka of its intersection with Hoone Road for Special Management Area Use Permit SMA (U)-2016-2 for POP Acquisition, LLC.

Mr. Hull: Chair There are no continued Public Hearings we are moving into General Business, I will turn this over to the County Attorney's Office.

County Attorney Nicholas Courson: Next item is I.1., Consideration of Time Extension for the construction of a third residence on a parcel and Amendment to add swimming pool on Tax Map Key 2-8-027:023, located at the terminus of Nalo Road, approx. 600 ft. mauka of its intersection with Hoone Road for Special Management Area Use Permit SMA (U)-2016-2 for POP Acquisition, LLC. There's a Director's Report pertaining to this matter, that's not the right item Kaaina. I thought you said General Business Matters?

Mr. Hull: I apologies in my gusto I thought we were in the Contested Case Hearing Actions, so I can still handle this portion of the Agenda. Thank you for that Nick, so Jodi is the planner and also she has a Directors Report for this matter.

Staff Planner Jodi Galinato: Morning Chair and members of the Commission.

Ms. Galinato read the Summary, Project Data, Project Description and Use, and Additional findings of the Director's Report for the record (on file with the Planning Department).

Ms. Galinato: And I will hold off on the preliminary evaluation.

Chair Mahoney: Ok. Is there any questions for the Planner before we bring up the applicant? Seeing none. Is there a representative for the applicant available? State your name for the record please.

Ms. Lorna Nishimitsu: Good Morning Commissioner's for the record Lorna Nishimitsu, representing Nalo Road which is essentially Frank Supon because of grandfather duties in Texas could not be here today. If you have any questions I can answer them or if you wanted me to just do a summary.

Chair Mahoney: Could you give a summary of it and perhaps there will be questions afterwards from the Commissioners.

Ms. Nishimitsu: Basically, this third dwelling is the one that triggered the SMA Permit, but in order to generate funding to construct the third dwelling there had to be tear downs and renovations to outright Permitted structures which would allow the funding to construct the third dwelling from the ground up. The utilities, water, electric, and cable has been all stubbed out to

this limited common element three, on which the third dwelling is proposed. We actually had requested an extension of time until February 2021 because of a fear that the permitting process may take longer than necessary or expected and then once the Permits are issued than it would give him a comfortable cushion of time to begin construction of and complete the third dwelling and the swimming pool. I believe there was a concern raised that the swimming pool was going to be placed in the condominium projects common element, but it is actually entirely confined within the limited common element. There is not going to be an issue with the other owners or the owners of the other two dwellings. So, what Mr. Supon would like is an extension of time to meet the requirements of the development authorization you had previously given him to complete his third dwelling.

Ms. Apisa: Question. He is asking for an extension, February of 2020?

Ms. Nishimitsu: In our letter we have requested till 2021. I think the Planning Department's recommendation is 2020, because completion is considered to be completion of the foundation. But, if we can't get our Permits out within a timely period of time, that's going to be kind of pushing it as far as the developer is concerned, which is why we had asked for an additional year so that we would not have to be before you again saying we need an extension of time because we could not get the Building Permits or whatever so we are asking for 2021.

Chair Mahoney: Commissioner Streufert.

Ms. Nogami Streufert: The first two houses were sold and their building the third one. Does that mean that this was condominiumized land or does that mean that this was subdivided?

Ms. Nishimitsu: No it was condominiumized after the SMA Permit obtained in 2016 the Developer went through the process of condominiumizing it because it would be easier to sell to people who don't want co-owners of a house on a larger lot. The sales of the two houses that were renovated were what gave the Developer the funding to start the third house and prospective buyer had asked if a swimming pool could be included that is why we are before you asking for an amendment of the SMA for the third house to include a swimming pool which had not been proposed before.

Ms. Nogami Streufert: So the third house with the swimming pool and the parking areas. I think the parking areas are part of the third house it's not attached neither to the first or the second?

Ms. Nishimitsu: The driveway access, the septic system, and the parking lot for all the houses are part of the common element so the association is responsible and charges the owners the limited common element for insurance, maintenance, etc. So the stalls are ready for the third house, the utilities are stubbed out for the third house, and that's as far as he got before he ran out of time had generated the funds and now is ready to proceed with the third dwelling.

Ms. Nogami Streufert: So the parking lots and the pool are in the common area as opposed to associate with house number three?

Ms. Nishimitsu: No. The swimming pool, if you look at the second attachment I had provided with the request for extension will show that the pool is within the limited common element, not the common element.

Ms. Nogami Streufert: But is it over the septic systems?

Ms. Nishimitsu: No. The septic system is in the common area. I know it's confusing but if you think of an apartment building common elements are like elevator shafts, hallways, things used in common by all the owners and the limited common element is your four walls of your apartment. So the limited common element for this third house includes the pool.

Ms. Nogami Streufert: So it's not for the rest of the others to use?

Ms. Nishimitsu: No. No. It's not.

Ms. Nogami Streufert: And based upon that, the pool, and I assume that the pool has an area around it that the people can sit, or it would also be impermeable around the pool there would be an area?

Ms. Nishimitsu: Yes.

Ms. Nogami Streufert: That, plus the house, plus the parking area, which is part of the common area, I guess? Are still under the 29%?

Ms. Nishimitsu: The parking area is not cemented or paved, it's apparently graveled. So it doesn't count towards impermeability or lot coverage.

Ms. Nogami Streufert: Is it intended to stay that way? I'm just thinking...about the drainage issues in that area. Thank you.

Ms. Nishimitsu: Yes. Otherwise they'd have to come before you for (inaudible).

Mr. Keawe: Lorna in your diagram the areas outlined for the new proposed unit three and there is a proposed septic system. Is that specifically for the new house?

Ms. Nishimitsu: No. The septic system is one used in common with the three dwellings.

Mr. Keawe: Right. So it says proposed so are you adding this house to that existing system or are you doing a whole new system for all three houses?

Ms. Nishimitsu: The new septic system is already in and it's for the three houses. Yes because the two houses had to be connected already to the septic tank.

Mr. Keawe: Right. Right.

Chair Mahoney: Any further questions? Jodi can we have your recommendation please.

Ms. Galinato: For the preliminary evaluation in addition to evaluating the proposed project aspects are being considered. The Department would support a two year extension time to allow the applicant substantially complete the construction of the third dwelling unit and swimming pool. The original approval was in 2016, so 2018 was the two years on the Permit and we were just...it just took us a while to get this on the agenda, I apologize so, based on the forgoing, it is recommended that the extension time be amended to allow construction of a swimming pool in associated and Permits be approved. The applicant is advised that the SMA Permit shall be valid for another two years to expire February 23, 2020, and the requirements of the SMA Use Permits remains in effect.

Mr. Hull: So given the report and the request of the applicants request to push it to 2021, the Department doesn't have any position really we are not supportive nor are we against it, it's at the Commissions discretion.

Mr. Keawe: Chair. I have a question. Obviously, the concern from the applicant is the ability to get the Permits through the process adequately. You guys work in the Department, What do you think?

Ms. Galinato: When it comes through, I'll handle it as soon as I can. I don't see an issue but, that's up to you guys. The Substantial complete construction means to put the foundation in. Just the Departments stand in the past if the work is not continuing, we just like to see why, when they need an extension. But it's up to you guys.

Mr. Keawe: So you stand by your recommendation of 2020?

Ms. Galinato: Yes.

Chair Mahoney: any further discussion?

Ms. Apisa: Just to clarify that just means the foundation is in by February 23rd, 2020?

Ms. Galinato: Yes.

Ms. Nishimitsu: I have no problem with Jodi being diligent. There are other agencies to whom plans have to be routed however, what I have clients complain about instead of using some other adjective to describe it, is that, it gets rejected by an agency, make these changes, it gets re-submitted, and then they say on something that was already apparently passed mustard, make these changes. So there is a back and forth with a particular Agency making it for the engineers and the architects something that they pull their hair out over. Jodi's review is different and she is the clearing house, so I know it will come out quickly, so that's the only thing I want to put before you is how much cushion they will give.

Ms. Apisa: I think I'm ready to make a motion.

Chair Mahoney: OK. Chair is open for a motion.

Ms. Apisa: I move that we approve the extension to February 23rd, 2020 with a provision that if there is a delay in getting the Building Permit that it be extended beyond that to no longer than, to no later than February of 2021.

Ms. Galinato: Maybe if that's how you want to do it, you might want to change it to; the applicant obtains Building Permit by 2021, or 2020, February 23rd, 2020, the applicant obtain the Building Permit.

Ms. Apisa: I'm good with that, that the motion be that the applicant have obtained a Building permit provided that the, having that they obtained a Building permit by? Please?

Ms. Galinato: If I understand what you are trying to do, I would say, 'Obtain the building permit by February 23rd, 2020, and complete the construction by February 23rd, 2021.

Ms. Apisa: I'm good with that.

Chair Mahoney: Does everyone understand that motion?

Ms. Nogami Streufert: Completing construction by 2021, does that mean the entire thing or just the foundation?

Chair Mahoney: The foundation.

Ms. Nogami Streufert: And this has been going on since 2016?

Ms. Galinato: Yes, but they have been making progress.

Ms. Apisa: I would think. Just being in the real estate business I would think the applicant is motivated to get it done either have use of it.

Ms. Nishimitsu: Or the proceeds of the sale of it. Yes. There is motivation.

Ms. Apisa: The motivation is to get it done ASAP.

Ms. Nishimitsu: That's correct.

Ms. Apisa: I can see that. That's kind of the stem of this. I am just trying to simplify it so that you don't have to come back again, but yet in a reasonable time you know.

Chair Mahoney: Ok. So the motion on the floor is does everybody that or is that what you want to revise you motion to?

Ms. Apisa: Right as Jodi stated, they will have the Building Permit by February 23rd, 2020, and that Construction Substantial Complete no later than February of 2021.

Chair Mahoney: Ok. Is there a second on the floor?

Mr. Keawe: Seconded.

Chair Mahoney: OK. It's been moved and seconded. Is there any further discussions? Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0. Thank you.

Mr. Hull: Next agenda Item is into the Petitions of Appeal now I will officially turn the meeting over to the County Attorney.

Chair Mahoney: Thank you. Director.

Notice of Appeal and Demand for Contested Case Hearing from Denial of submission of Administrative Fee for 2017 late renewal for: 5032 Weke Road, Hanalei, Hawaii 96714 (Certificate No. 5090) Kauains, LLC, from Gregory Kugle, Esq., and Joanna C. Zeigler, Esq., to Clerk of Planning Commission, Mr. Kaaina S. Hull (1/24/19) [Contested Case No. CC-2018-17.].

County Attorney Nicholas Courson: OK. Next Item is I.2., Notice of Appeal and Demand for Contested Case Hearing from Denial of submission of Administrative Fee for 2017 late renewal for: 5032 Weke Road, Hanalei, Hawaii 96714 (Certificate No. 5090) Kauains, LLC, from Gregory Kugle, Esq., and Joanna C. Zeigler, Esq., to Clerk of Planning Commission, Mr. Kaaina S. Hull (1/24/19) [Contested Case No. CC-2018-17.]. a. Clerk of the Commission's recommended to refer 1/24/19 Appeal of the Planning Department's Decision to the Denial of Submission of Administrative Fee for 2017 untimely renewal application.

County Attorney Maryann Sasaki: Good Morning my name is Maryann Sasaki. I am representing the Planning Department, I am a Deputy County Attorney. The Planning Department doesn't have any opposition to this.

Chair Mahoney: OK. Is there anybody for the applicant?

Ms. Maryann Sasaki: I don't see anybody her or him.

Mr. Nicholas Courson: This decision is just rather to set this case before the Commission? Or To refer it to a Hearings Officer.

Mr. Keawe: Referring it to what?

Chair Mahoney: A Hearings Officer.

Mr. Courson: And the Commissions sent previous items like this at our last meeting to a Hearings Officer.

Chair Mahoney: There are similar cases in this juncture for consideration perhaps to go to a Hearings Officer. Well is there are motion on the floor?

Ms. Apisa: I move that we submit this case to a Hearings Officer.

Mr. Keawe: Seconded.

Chair Mahoney: OK. It's been moved and seconded. Is there any further discussions to accept the Hearing Officers Report? Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0. Thank you.

Notice of Appeal and Demand for Contested Case Hearing from Denial of submission of Administrative Fee for 2017 late renewal for: 5042 Weke Road, Hanalei, Hawaii 96714 (Certificate No. 5091) Kauains, LLC, from Gregory Kugle, Esq., and Joanna C. Zeigler, Esq., to Clerk of Planning Commission, Mr. Kaaina S. Hull (1/24/19) [Contested Case No. CC-2018-18.].

Mr. Courson: OK. Next Item is I.3., Notice of Appeal and Demand for Contested Case Hearing from Denial of submission of Administrative Fee for 2017 late renewal for: 5042 Weke Road, Hanalei, Hawaii 96714 (Certificate No. 5091) Kauains, LLC, from Gregory Kugle, Esq., and Joanna C. Zeigler, Esq., to Clerk of Planning Commission, Mr. Kaaina S. Hull (1/24/19) [Contested Case No. CC-2018-18.]. a. Clerk of the Commission's recommended to Refer 1/24/19 Appeal of the Planning Department's Decision to the Denial of Submission of Administrative Fee for 2017 untimely renewal application. Same comments.

Chair Mahoney: OK. We have a similar situation here different case, similar situation. Is there a motion?

Ms. Apisa: I move to defer/refer this to a Hearings Officer.

Chair Mahoney: Ok. There's a motion on the floor to move it to a Hearings officer. Is there a second?

Ms. Nogami Streufert: Seconded.

Chair Mahoney: OK. It's been moved and seconded. Is there any further discussions. Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0. Thank you.

Notice of Appeal and Demand for Contested Case Hearing from Denial of submission of Administrative Fee for 2017 late renewal for: 5020 Weke Road, Hanalei, Hawaii 96714 (Certificate No. 5089) JJGRAT, LLC, from Gregory Kugle, Esq., and Joanna C. Zeigler,

Esq., to Clerk of Planning Commission, Mr. Kaaina S. Hull (1/24/19) [Contested Case No. CC-2018-19.].

Mr. Courson: OK. Next Item is I.4., Notice of Appeal and Demand for Contested Case Hearing from Denial of submission of Administrative Fee for 2017 late renewal for: 5020 Weke Road, Hanalei, Hawaii 96714 (Certificate No. 5089) JJGRAT, LLC, from Gregory Kugle, Esq., and Joanna C. Zeigler, Esq., to Clerk of Planning Commission, Mr. Kaaina S. Hull (1/24/19) [Contested Case No. CC-2018-19.]. a. Clerk of the Commission's recommended to refer 1/24/19 Appeal of the Planning Department's Decision to the Denial of Submission of Administrative Fee for 2017 untimely renewal application. Same comment.

Ms. Nogami Streufert: I have a question. Since these cases are all the same and they were presented on the same documents, can they be all sent to the Hearings Officer as one case?

Mr. Courson: That would be a decision...I can see either party making that movement but that would be for the Hearings Officer or if you folks were deciding it, you may decide to consolidate it, but it wouldn't be appropriate for the Commission to consolidate them and send them that way. It would be more appropriate for the Hearings Officer to hear from the parties about it, because the parties may feel that, that's great because it serves their interest or they may feel there is particular reasons why it should be treated separately. So we wouldn't want to make that decision unilaterally. So that may come up later but at this particular stage it would be premature.

Chair Mahoney: That would not be a good thing. So if wanted it to go to a Hearings Officer it would not be in our purview anyways so.

Mr. Courson: But if the Commission was hearing it itself you may decide to consolidate it, but we don't have enough facts yet to decide if that would be appropriate.

Chair Mahoney: OK. Any further questions?

Mr. Keawe: Further question. So Nick that would be the purview of the Hearing Officer if he decided along with the litigants in that case to consolidate, he could do that, if they all agree.

Mr. Courson: I believe so. He would hear what they would have to say, but if on the face of it they appear to be very similar. The Judicial economy sometimes does consolidate things but if either side has reasons why they don't think that's appropriate. So it would be up to the in this case the Hearings Officer to make that determination. But after he heard from the parties.

Chair Mahoney: Do we have a motion on the floor?

Ms. Apisa: I will make a motion for this particular one the same as the previous two that we refer this Certificate No. 5089 to a Hearings Officer.

Mr. Keawe: Second.

Chair Mahoney: OK. It's been moved and seconded. Is there any further discussions. Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0. Thank you.

UNFINISHED BUSINESS

Petition to Appeal Decision of the Planning Director; Exhibits "A" Through "K", Certificate of Service, from Dennis M. Lombardi and David G. Brittin, Attorneys for Appellant re Anini Beach Hale LLC for a Transient Vacation Rental Non-conforming Use Certificate #5081 for property located in Kilauea, Kauai, Hawaii, Tax Map Key No. (4) 5-3-007-006. [Deferred 11/26/18.]

Mr. Courson: I believe the next item on the agenda is L.2, the amended Agenda so it would be Petition to Appeal the decision of the Planning Director. The Commission approved an amended Agenda which took an Item out of order. The next Item is L. 2, and then will get back to I.5. But L.2, Petition to Appeal the Decision of the Planning Director Exhibits "A" through "K", Certificate of service, from Dennis M. Lombardi and David G. Brittin, Attorneys for Appellant re Anini Beach Hale, LLC, for Transient Vacation Rental Non-conforming # 5081 for property located in Kilauea, Kauai, Hawaii, Tax Map Key No. (4) 5-3-007-006 Deferred 11/26/18.

- a. Clerk of the Commission's recommendation to Refer 8/20/18 Appeal of the Planning Department's Decision Related to the Denial of Non-Conforming use Certificate Packet submitted on 8/13/18, as required by Kauai County Code, Sec. 8-17.10 (h) (1) for TVNCU # 5081, *Anini Beach LLC*, Tax map Key 53007006 (Contested Case Hearing No. CC-2018-8) to conduct the required analysis and contested case hearings related to the above referenced appeal. [Deferred 11/26/18.]
- b. Letter dated September 7, 2018 from Dennis M. Lombardi and David G. Brittin, Attorneys for Appellant re *Anini Beach Hale LLC* for a Transient Vacation Rental Non-conforming Use Certificate # 5081 pursuant to Section 1-9-4 (c) of the Rules of Practice and Procedure of the Planning Commission of the County Of Kauai requesting that the subject appeal be deferred and not placed on the Planning Commission Agenda for a period of ninety (90) days so that the Appellant may evaluate this matter. [Deferred 11/26/18.]
- c. Status Report re Appeal of Forfeiture of TVRNCU #5081, Tax Map Key 53007006, Anini, Kauai, *Anini Beach Hale LLC*.

Ms. Maryann Sasaki: The Planning Department would like to go forward with this contested matter.

Ms. Nogami Streufert: I'm sorry I can't hear you.

Mr. Keawe: I can't hear you.

Ms. Maryann Sasaki: The Planning Department would like to go forward with this contested matter it's been deferred three times. Refer to Hearings Officer.

Mr. Courson: Is there anyone from the other side here?

Chair Mahoney: OK. So does everybody understand what just took place and it's been recommended by the Planning Department to move it to a Contested Case? So there is nobody from the applicant present it's been called out? So it's up to us to decide if the motion on the floor to move this Item to a Hearing Officer?

Mr. Courson: Yes. The options are to move it to a Hearings Officer or hear the Contested Case.

Ms. Nogami Streufert: And that would not be today?

Mr. Courson: No. Either way it's not today.

Mr. Keawe: I move to move this Item Anini Beach Hale LLC, Contested Case Hearing # CC-2018-8 to a Hearings Officer.

Ms. Apisa: I seconded.

Chair Mahoney: OK. It's been moved and seconded. Is there any further discussions. Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0. Thank you.

GENERAL BUSINESS MATTERS (Cont.)

Planning Director Update on the implementation of Ordinance No. 1026, also referred to as the Additional Rental Unit Ordinance.

Mr. Hull: Next on the agenda is Item I.5, the Planning Director update on the implementation of Ordinance No. 1026, also referred to as the Additional Rental Unit Ordinance. Documents provided are Ordinance No. 1026, Bill No. 2686, Draft 2, A Bill for an Ordinance to Amend the Kauai County Code 1987, as amended, Charter 8, Relating to Comprehensive Zoning Ordinance. As well as 5.b, County of Kauai, Department of Planning, Additional Rental Unit (ARU) permitting Information and Instructions. So in March of 2018, so it's approx. 11 months ago, the Additional Rental Unit Ordinance was passed. It was originally vetted through the Planning Commission sometime before that, if the Commission recalls, the original proposal was for an additional rental unit's provision to be provide for the Lihue planning area. There was some concerns ultimately it went up to the County Council that given the housing inventory crisis that there would possibly be a need to open up island wide. The Department spent about two years meeting with various stakeholders, community groups, and agencies to see the viability of an island wide ARU policy. Ultimately it came back to you folks and then to the County Council with an island wide Policy for providing additional units in the Residential Zoning District. There was a provision that was adopted to allow rental units with the exception of North of the Hanalei Bridge essentially and that was predicated on the limited evacuation routes out of a hazardous area. So, in March (inaudible) policy went into effect, and just as a reminder that is essentially to allow for an 800 sq. ft. dwelling no larger than an 800 sq. ft. dwelling to be allowed to be allowed in the Residential Zoning District as an associate to every single dwelling unit that is permissible on a subject lot of record or a respective lot of record. And that unit cannot be

CPR'd off or subdivided off and cannot be used for vacation rental purposes. So it's primarily to provide for housing needs be them you know keiki coming home from college, kupuna aging in place, or just as for tenants in the rental market. We have had in the past eleven months considerable interest in the additional, excuse me, in the ARU property right. We have had roughly fifty (50) to, we don't track exactly how many people take an application. We track when they apply for it officially, so we don't track when they take an application but in talking with our front counter staff, they estimate approximately fifty (50) to sixty (60) applications have been taken out as well as in discussions with our phone service staff, there are a predominant amount of questions and inquires that the office gets concerning additional rental units. We have approved six (6), ARU clearance forms, and those clearance forms are essentially, what an applicant will walk around to the various agencies to ensure as to whether or not there property qualifies for an ARU, the infrastructure needs and what have you. So we approved six (6), of those and two (2), ARU's are currently getting building permits as we speak. This is a small number, quite honestly, and I wouldn't say that it speaks against the ARU policy in saying that it's not providing the solutions that was intended. It takes time, the Department view of it is that it takes time for the paradigm shift to really be adopted by developers, realtors, and contractors to get used to, and there is this new policy to allow for ARU's. How do you go about essentially permitting it and financing it? This is very similar and akin to when the ADU policies was adopted, the Additional Dwelling Units policy, in the first few years there weren't many ADU applications that were applied for or approved. But as residents, contractors, financiers, and whatnot became used to this new entitlement, we saw more applications come on-line so in the first few years barely any ADU applications approved. In the pass 20 some years there have been a thousand permits approved in the Residential Zoning District. So it takes time to catch on, we are actually very optimistic given the amount of interest that has been given to ARU's and expect to see more applications on the near horizon. That's the presentation in a nutshell.

Mr. Courson: Commissioner Ho.

Mr. Ho: Let me fire three questions at you really fast. This will include a kitchen unit, you can have a kitchen?

Mr. Hull: Correct. In the area room you can have a kitchen.

Mr. Ho: And if you have and ARU can you have an ADU?

Mr. Hull: Yes, so you can...every residential property qualifies for an at least one dwelling unit. Now when the ADU policy was adopted, there was also residential properties that qualify for two, three, and four depending on the size or respective Zoning. The ADU Policy that was adopted in the 80's essentially state that, for those properties, residential properties that qualify for only one dwelling unit, you qualify for an ADU. So if you qualify, if your property qualifies for say two, three, or four dwelling units, you don't qualify for an ADU, you got the ability to make more dwelling units. So for every property that qualifies for one dwelling unit, you qualify for an ADU. And the ARU Ordinance, that ARU, or I should say Un-ARU is tied to a dwelling unit essentially, legally, it doesn't have to be attached physically. Legally its part of a dwelling unit. So for every dwelling unit your property is entitled to. You are entitled to an ARU. So if you have one dwelling unit that your property qualifies for you qualify also for an ADU, now

that ADU and that primary dwelling, also each qualify for an ARU. Does it make sense or did I muddy that?

Mr. Ho: No (inaudible). Does this legalize people who already have an ARU that's not permitted?

Mr. Hull: A it provides a legal path for legalize on unpermitted rental or dwelling units. So if you have say put a kitchen, a second kitchen in your house or in your guest house that was not approved and you couldn't apply for them before, you could apply now for a Zoning Permit, you also have to apply for a Building permit for it to be legalized. So it provides the avenue but it does not automatically legalize these illegal dwelling units.

Mr. Ho: No fines?

Mr. Hull: It depends, the fine structure enforcement code requires us to notify anybody who has an illegal structure prior to issuing a fine. In cases for ARU's which you are very familiar our TVR enforcement team is actively out there monitoring and looking for illegal TVR's. Concerning the rest of the Zoning Code, it's strictly complaint driven, so our enforcement officer, we have one enforcement officer for the entire CZO outside of the TVR's. So if he is notified of an illegal structure and he does an inspection and then if he does find an illegal rental unit or an illegal kitchen so to speak, he issues a notice of Zoning Compliance Notice that you have to bring this into compliance. If then the building owner has the opportunity either to rip that kitchen out or now they can apply for an ARU. Our zoning team, our enforcement team will only issue the fine should after notifying a building owner they failed to comply within a reasonable amount of time. So it's not an automatic fine but it depends on a case by case rather or not fines are issued.

Mr. Ho: Septic system, sewer system?

Mr. Hull: Yes, so in the discussion with the Department of Health, their septic systems that they are approving can handle up to two kitchens and five bedrooms, once you exceed one of those you have to get a separate septic system our hook up to a sewer system.

Mr. Ho: Cesspools doesn't qualify?

Mr. Hull: Cesspools there are not approving cesspools anymore.

Ms. Nogami Streufert: A question on the Permitting information and instructions prohibited any property not within the residential zoning district and any property west of the Hanalei River. Why was the west of Hanalei River an issue?

Mr. Hull: That is what I was explaining earlier, north, west of the Hanalei River is a more geographically correct but Hanalei River towards Haena, the reason that came up was because of limited evacuation routes and much of those properties being in a hazard zone. The desire of that community to not see further increase and density out there.

Ms. Nogami Streufert: And this has to be check, it has to be part of the deed because it says to check the deed for restrictions on development.

Mr. Hull: Now we are just putting the applicant on notice to check the deed but the Department of the County does not enforce deed restrictions right?

Ms. Apisa: Yes, they have to come to the County and County got their own standards.

Mr. Hull: So it's good for them to be aware of the deed restrictions if there are any but under code we are required to approve it if they qualified for it.

Ms. Apisa: I think using an example, Princeville is single family, I doubt if they would ever allow an ADU or an ARU. So that would be one example where it could be a deed restriction.

Mr. Hull: Yes. But just to be clear, so that's a property entitlement or a property right that the CZO gives to residential properties. So if, say in Princeville, an applicant comes to our front counter with an application for an ARU and they meet all the requirements, we are required by law to stamp that application approved although we are going to put them on notice to say you got to check your deed restrictions because you may have a civil matter pending before say your condominium association or what not. If someone came in with Princeville and we approved there ARU application and they ultimately constructed it, it wouldn't be a zoning violation but it could be a violation of the Associations rules and it's up to the Association to enforce upon those rules.

Chair Mahoney: OK. Thank you.

Mr. Hull: If there are no other questions, the Department would just recommend a motion to receive the update.

Ms. Nogami Streufert: Just to be clear the 800 sq. ft. is the entire interior space to include access restructure. So it's not a footprint, it's the entire structure?

Mr. Hull: It's the entire structure walled structure so it would not include lanai's or open air garages.

Ms. Nogami Streufert: But it would include if it was two story?

Mr. Hull: Correct, so you could have a 400 sq. ft. footprint but if you had two story's that would be 800 sq. ft. correct.

Chair Mahoney: So Chair will entertain a motion to accept the report.

Ms. Apisa: I move to accept the Planning Directors report.

Chair Mahoney: OK. It's been moved and seconded. Is there any further discussions. Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0. Thank you.

UNFINISHED BUSINESS

Special Management Area Use Permit SMA (U)-2019-2 for a development involving the construction of a two (2) single-family residence on a parcel located on the makai side of the Kuhio Highway in Wainiha, at its intersection with Mikala Place, further identified as 5-7196 Kuhio Highway, Tax Map Key: 5-8-008:009, and containing a total area of 15,588 sq. ft. = Lon Malapit. [Director's Report received, hearing closed, and deferred 1/8/19 to 2/12/19.]

Mr. Hull: Next agenda Item in Unfinished Business L.1, Special Management Area Use Permit SMA (U)-2019-2 for a development involving the construction of a two (2) single-family residence on a parcel located on the makai side of the Kuhio Highway in Wainiha, at its intersection with Mikala Place, further identified as 5-7196 Kuhio Highway, Tax Map Key: 5-8-008:009, and containing a total area of 15,588 sq. ft. = Lon Malapit. So just as a summary refresher, the application here was up for review previous Planning Commission meeting, the recommendations had been read off, there was a floor motion to amend the recommended Condition of approval and put together Condition No. 5. As you can see in the report that Dale just handed out to include the language that the restriction on TVR's or Home Stay Uses be incorporated into a deed restriction for subject parcel. And so ultimately the applicant was not sure if they were in agreement with that recommended Condition of approval and a deferral was requested in order for them to go over the proposed Condition. The applicant is here I don't know if Dale, you have any further reports?

Chair Mahoney: Could we have the applicants come and state your name for the record please.

Mr. Lon Malapit: Aloha, my name is Lon Malapit and this is Leann Malapit my wife.

Chair Mahoney: Ok so Lon and Leann so from our past meeting you wanted to review and you have the supplement to the Director's Report and make sure if you are comfortable with all the Conditions there as stated including No. 5 the one that was probable and in question.

Mr. Malapit: Yes we are.

Chair Mahoney: No problem what so ever? Does any of the Commissioners have any questions for the applicant? Everybody remembers that was what they wanted to have further consideration with...is there any recommendation from the Planner?

Staffer Mr. Dale Cua: Good Morning Chair. All the Conditions all of I believe thirteen (13) of them is before you. With the exception of No. 5 which has been revised and the included language shown underscored in the report that's been handed out to you.

Chair Mahoney: OK. At this juncture the Chair will entertain a motion.

Mr Keawe: I move to approve Special Management Area Permit SMA (U) – 2019-2 Lon Malapit with thee amended Conditions especially Condition No. 5.

Ms. Apisa: I second.

Chair Mahoney: OK. It's been moved and seconded. Is there any further discussions. Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0. Thank you. Congratulations.

Mr. Malapit: Thank you.

Chair Mahoney: Thank you for your patience and your contributions.

NEW BUSINESS (For Action)

Class IV Zoning Permit Z-IV-2019-10 and Special Management Area Use Permit SMA (U)-2019-4 to allow renovations to the existing hotel facility that includes a new courtyard, pool and recreation area, and associated site improvements on a parcel located along the makai side of Aleka Loop in Waipouli, situated approx. 400 ft. south of its intersection with Kuhio Highway, further identified as 650 Aleka Loop, Tax Map Key: 4-3-007:028, and affecting a total area of 10.377 acres in size = KHS, LLC. [Directors Report received 1/22/19].

Mr. Hull: Next agenda Item in Class IV Zoning Permit Z-IV-2019-10 and Special Management Area Use Permit SMA (U)-2019-4 to allow renovations to the existing hotel facility that includes a new courtyard, pool and recreation area, and associated site improvements on a parcel located along the makai side of Aleka Loop in Waipouli, situated approx. 400 ft. south of its intersection with Kuhio Highway, further identified as 650 Aleka Loop, Tax Map Key: 4-3-007:028, and affecting a total area of 10.377 acres in size = KHS, LLC. I want to request a 10 minute recess so that they can set up their projector.

The Commission recessed this portion of the meeting at 10:15 a.m.

The Commission reconvened this portion of the meeting at 10:25 a.m.

Ms. Jody Galinato read the Director's Report for the record (on file with the Planning Department).

Chair Mahoney: Is there any questions for the Planner before we hear from the applicant? Hearing none. You're a representative for the applicant? Could you state your name for the record please?

Mr. Tom Schnell: Yes. My name is tom Schnell, I am with PBR Hawaii Associates. I understand you have a presentation to make. Maybe we should move out of the way and make some adjustments.

Mr. Tom Schnell: Good Morning Commissioners. As I said my name is Tome Schnell, I'm with PBR Hawaii Associates Inc. I am a principal with the firm. Our firm prepared the SMA application and our firm also worked on the landscape architecture of this project especially for

the Courtyard area. With me today I have Daren Howard, who's the owner's representative also Russel Chun from PBR Hawaii is here, his the landscape architect that worked on the project, Terrance Arashiro is here he is our Civil Engineer and Aaron Williams is with us he did the architectural work and we have the Hotel Manager, Shaun Borges. I think Jodi gave a pretty comprehensive report but let me just go over a few things. I think you might all be aware of it. Just going back we called it at the hotel we called 650 Aleka Loop, everybody knows it as Marriot Court Yard, It's in the Waipouli area. Aleka Loop, this doesn't show up very well (Pointing out places on the presentation map of the area) but this is Longs Drugs right here and Aleka Loop comes off Kuhio Highway right here and loops around here so I have a better picture of it. This one might be better the Tax Map Key Map, it's about 10.377 acres, the property right here is all one continues TMK, long is right here, this is Aleka Loop. As Jodi stated, the general plan designation is resort, the property is also designated or Zoned RR20, small area around the shore line is in the open area, this is the general plan map, I did not have a zoning map but the properties here, just a little bit of the shore line is in the open district. It's in the visitor destination area, the property is here. It's in the SMA that's why we are here and we are also here for the SMA Use Permit and the Class IV Zoning Permit. And I'm just going to go over briefly little bit about the property and some of the improvements and then I will leave it open for questions so we want to keep the presentation brief. The exiting hotel has 311 guest rooms, its four stories, first floor is mainly entry, lobby, and restaurant, and there are some guest rooms on the first floor. There is also what's called a paddle room you may be familiar with it it's a multi-event use space I think it used to be an event area for music, it has a stage area. The grounds include a Courtyard and a the pool and the recreation deck which are here, 248 parking stalls and Jodi mentioned 8 public shore line access parking stalls over here, there is public access shoreline path, there is a dedicated access along this side and also just a commonly used access on this side, both of these will remain. Here is some pictures of the lobby and Porte Cache area. This is the old luau building Jodi was talking about, it was damaged by fire several years ago, and it's not being used, but being used for some storage sometimes. Part of this project is to demolish, demo this and create and open grass area here. This is a view from the coast line, there is an existing shoreline path here, concrete, the Courtyard area is here, and the building forms somewhat of a u-shape with an interior Courtyard. This are down here, this is the paddle room right here and this is the stage area that I was talking about so when you are in the paddle room this is kind of the back stage area and this I will get to it but this little stage area shelter is meant to be demoed and then windows put on the front of this area. This is what the pool looks like now or it did...it pretty much looks like this now, I saw it last night. This picture is a few months old. This is the restaurant area and a bar area on this side and this is the other side over here. So I am just showing this again so I can show you what the proposed conditions are and it's going to change from these conditions, you'll see the Luau building here and the main changes are in the courtyard area. So the Luau building will be demolished, the courtyard will be renovated with new landscaping and a new pool and I can go through some of the changes. The courtyard will have a new pool, it will have keiki and adult pools, there is a redesigned, and the whole rec-deck area is redesigned. There are new fire pits and lounge areas like little grouping areas, all new landscaping and an irrigation system, there will be a trellis area outside of the restaurant, the restaurant is right here, there's already seating there but its umbrellas so this will be a trellis system. The trellis will be fifty percent open or more. There is a new bar pavilion structure proposed right here and I have some illustrations of that, the Porte Cache is up here and its due for update and it includes a different surface, concrete paving there.

In general the building was built in 1977, and originally opened up as a Holiday Inn, I think. There's been some minor reservations over the years and different hotel brands, I think the most recent one renovation in 2011, but it wasn't a major renovation. So the building needs to be updated a lot of fixtures need to be replaced, there is Spalding, it will be painted. The interior lobby or the interior ground floor lobby renovation and the overall idea is to more integrate these outdoor edges with the courtyard so there is more opening up of these interior areas to the exterior. This paddle room is right here and that little stage area would be demoed and windows would be put in, in there so it would open up to views from the paddle room and when you are walking by it won't look like the back of the hotel when you're walking the shoreline. There is a new market and coffee shop in the interior, fitness center expanded, and an updated finishes. There is a feature called a departure lounge, this is an area where people can go after they check out and they have to catch a later flight so they can sit down or rest, there's that feature added too. This is a little close up area of the courtyard area, this is the existing courtyard and the existing pool, and this is the way it will look when it's revised. So this is the keiki pool and this is the adult pool and this is the bar structure. The bar is currently in this area so the intent is to bring the bar out here in an open area where you have better ocean views. I will go back one more time to this, this is the existing, and no this is the revised.

Ms. Nogami Streufert: While you have those two up there can I ask you a question?

Mr. Schnell: Sure.

Ms. Nogami Streufert: There was an additional 318 sq. ft. area, pavement area that was going to be extending 1- 2 ½ ft. into the shoreline setback in addition to and from the existing one, can you indicate where that would be.

Mr. Schnell: Sure, thanks for the opportunity to clarify that. So this is the shoreline setback area, shore setback line this is 100 ft. from the certified shoreline here, you can't see it very well, but you can see it, it's a small area that extends in front of the shore line and setback line. It varies between 1 ft. in width and 2 ft. in (inaudible) so over here is 1 ft. and it gets a little bit wider here and that's just to provide access, better access around the pool. That area will be saw cut every 3ft. so it can break away easily and it's about 318 sq. ft. this total stripe right here. If I can go back you can see the setback line there, it's currently a little loop that goes out here now so we would change to this.

Ms. Nogami Streufert: If you were to put that back so that it is outside of the setback would that change it significantly?

Mr. Schnell: I can ask...the purpose of this was to get little bit more maneuverings around in front here and it was meant to break away if need be.

Mr Keawe: So I just...one more quick question. So the maximum width of that addition is about 2 ft.? Is that what you are saying?

Mr. Schnell: Maximum yes.

Mr. Keawe: By the length of the walkway.

Mr. Schnell: It's about 1 ft. and then it tapers to about 2.5 ft.

Mr. Keawe: And that makes the 300 sq. ft.?

Mr. Schnell: Yes. Yes. So this is an overall site plan I wanted to illustrate this is the paddle room area here and this is the new window area here that goes in the front area, the shore line is up here. And the new bar structure would be right here, this is the picture of the paddle room or an image of what it would look like with the windows in this area when opened up to the view. Right now this is just a blank wall but the stage is here from the shore line if you look at it, it's the stage area and kind of a blank wall. So this is the paddle wall with the exterior windows from the shore line this would be the bar pavilion structure, it's a separate structure from the existing hotel structure. And this just a south alleviation the side of the pavilion structure, and this is our rendering proposed of what the pavilion structure would look like obviously from the bar looking out to the shoreline. And that's it, I wanted to keep it brief those are the basic elements of the renovations. We have our team here to try to answer any questions I'll refer to our team if we need to.

Chair Mahoney: Any Commissioners have any question for the applicant? Commissioner Streufert.

Ms. Nogami Streufert: Yes please. On the Civil Engineers report, it states that there is no fire protection plan. That may not have been required at the time it was built but it is now and that was something that the Fire Department had said you had to comply with all the fire regulations. I did not see a plan in here for that though.

Mr. Schnell: It may not be in here, I know that the applicant is submitting for building permits in various stages and I have seen the building permit set plans and they do have a detailed fire access and fire code requirement sheet. So it's being dealt with at the building permit stage but there is no problem with complying with the Fire code requirements.

Ms. Nogami Streufert: So there's no problem with that, you will be complying with all that? Because I think one of the issues was a 1 inch pipe of water that was part of the Civil Engineers report about what amount of water was going to go through that system.

Mr. Schnell: Since we have our Civil Engineer here, maybe he can answer that question.

Mr. Terrance Arashiro: Good Morning Commissioners. My name is Terrance Arashiro with Austin Tsutsumi & Associates. So just to clarify in the Civil Engineering section of the report, the reason why I say there is no Fire Protection requirements is that was just addressing the pool area which did not have any structures within the courtyard. The bar areas, the interior building which is actually handled by the Mechanical Engineer definitely has fire protection including in the system. So that is part of the Building Permit Package.

Ms. Nogami Streufert: Do you intend to have any fire protection in the courtyard area or is that not?

Mr. Arashiro: There's no structures there are work is primarily the pool area, hard scape, (concrete pavement, side walk finishes) that type of thing so there is no fire protection within our area, within the Civil Engineering the site work area there is no fire protection provided that, if that provides clarification.

Ms. Nogami Streufert: Is that safe?

Mr. Arashiro: Well generally for Civil Engineering, because we are just dealing with the exterior, there is nothing that we have that we have that requires fire protection. Maybe from a standpoint of the landscaping, there are going to be fire pits which have in and of itself a mechanisms to shut down in emergency, emergency valves. But from a water provision, there nothing in the courtyard that would requires fire protection, there is no flammable structures or anything flammable our any type of structure that could be damaged by fire.

Mr. Schnell: We also have our architect here so he can talk about fire protection for the structures.

Chair Mahoney: Could you state your name for the record please.

Mr. Aaron Williams: A my name is Aaron Williams. The project Architect. So all the structures that were are providing like the pool bar structure is open on all sides but we are still providing sprinklers. Anything on the courtyard that is not covered by a ceiling isn't typically protected under fire it's not a requirement by the building department or by any kind of jurisdiction.

Ms. Nogami Streufert: And how is the fire pit fueled?

Mr. Williams: It's natural gas right now. And then it does have the shut off valve in case of an emergencies.

Ms. Nogami Streufert: Should that get out of hand is there some place... we had a Luau house fire right? So is there any provision for safety?

Mr. Williams: There's the egress pathways that are lit per code as well. I believe it's a 1 foot candle maybe 2 foot. We did meet the code requirement for the egress pathway out to additional open space and the public way.

Ms. Nogami Streufert: And you will be working with the Fire Department on all of this?

Mr. Williams: Yes. We've been working really close with them, they come out probably once a week to inspect.

Ms. Nogami Streufert: OK.

Chair Mahoney: Mr. Ho.

Mr. Ho: This is redundant but I would like to hear from yourself and you are going to be so you people will be watching you. Can you tell us about the lateral bike path there how you intend to perhaps build while you're in construction and the bigger part was that you would be even willing to put some money in it for the County to build?

Mr. Schnell: So I've been talking to Doug Haigh at the County about the bike path and I understand that the way it works is if the applicant would build the bike path and then create an easement and donate the value of the easement and the bike path to the County then the County can receive Federal matching funds from that value of that donation. So the applicant has no problems to do that.

Ms. Apisa: And the value is like 4 to 1? Something like that I think they said.

Mr. Schnell: I don't really...I just know that there is a matching part I think Public Works would know the value. Yes. And I did talk to... I know there is a gentlemen hear from path Hawaii, I think I spoke to one of his associate, Tommy Knowles, I think.

Chair Mahoney: I have one about labor. Who are you using labor to do the job?

Mr. Schnell: So there is general contractor that's a mainland general contractor but then the subs that he will be hiring will be local labor so all of the concrete work and all of the courtyard work is all going to be local subs to the general.

Chair Mahoney: Is there going to be local laborers out on that project?

Mr. Schnell: There will be yeah. And Daren Howard the owner's rep. could speak a little more to that if you need more details.

Chair Mahoney: Yes. I'm one of the labor reps. I'm here as the Chair so I would love to hear more about the choices of laborers because a lot of times when these projects are given you want something this community needs to work also and we have a labor force here. We have good General Contractors so I would likely speak to him.

Mr. Schnell: Sure. I also understand that there is a condition that the Planning Departments proposed about using local labor also, that we have no opposition to so it's ok.

Chair Mahoney: If we could hear from him I would appreciated it. Please state your name for the record please.

Mr. Darren Howard: I work for Davidson Hotels and Resorts and I'm the owners Rep. Project Manager for the renovation.

Chair Mahoney: Ok and as for as the General Contractor any selection?

Mr. Howard: OK. So the General Contractor we are selecting is Cason Associates, they are based...they are in the mainland and they are based in Texas. Their roll for the Courtyard work is very limited because most of their site work as Tom mentioned and the pool work will be done by either Hawaii based or Kauai based contractors. However, with the other complexities of the interior guest room renovations and the public space renovations we are having Case be the overall GC however their roll for the Court yard work is fairly limited.

Chair Mahoney: Why wasn't one of Kauai's GC's considered?

Mr. Howard: I don't know. I been with Davidson for a year, Case was selected prior to me coming on board and the people that proceeded me are no longer with the company and Case was on board at that time. Most of the work is being coordinated through KLC Design Build, who is a Maui based, however, they also have a Kauai presence, they are coordinating the pool construction as well as the site demolition and the landscaping and most of that work will be coordinated through...

Chair Mahoney: You know when you start a project, don't you understand that there is Kauai Contractors over here that there would be a little bit more input to selecting some qualified Contractor from Kauai to do a project?

Mr. Howard: I understand and we have eight sub-contractors including KLC Design Build for the pool, Fran Ramos will be doing the site excavation and she is based on Kauai. Ryan Rutt from Island Masonry will also be participating site work. Ryan Kimball from Readyman Services, Kauai based will be working on other site work, Huber Pools is a based Kihei from Maui they will be doing a majority of the pool work. In addition to that we are...

Chair Mahoney: You seem to be helping a lot of other people out but the people who live here. There is a work force here, there are General Contractors here with resort experience and you know, you choose...you chose who you chose but your know, that should be a major consideration. I've seen it before here a major hotel renovation, there's a workforce here, there's qualified workers here, there's qualified General Contractors here and then somebody out in Texas is selected to be a General Contractor and you want considerations.

Ms. Nogami Streufert: To follow on to that, if there are a lot of these out of island contractors who are coming here, is there any requirement for housing for these people? There are certain...We've had certain proposals where you had to have some housing for your labor force so that we don't impinge upon the local housing market, Kukui'ula and stuff like that didn't we?

Chair Mahoney: I don't think so.

Mr. Hull: I would have to double check, I'm not familiar but I can double check.

Chair Mahoney: One of the things you know I'm a little more familiar with the former renovations not the one that recently happened but the one before that, maybe fifteen, twenty years ago, in that very place it was without a licensed contractor from California that had no

license in Hawaii. He had workers in there, underage workers, undocumented workers, and twenty of them were led out in handcuffs out of there.

Mr. Howard: Obviously, Prior owner ship was different.

Chair Mahoney: Right, right it was. But my point here is on a small island I think more emphasis should be placed on checking on some qualified General Contractors that are on Kauai.

Mr. Howard: And I can understand that, I mean eight of our sub-contractors are either Kauai based or Hawaii based. Over eleven of the vendors that I can count are Kauai based. Those vendors would include; Rita's Disposal, for the concrete disposal, Honsador concrete who's Kauai based, Thronas, for concrete supplies, he is based in Kauai, we are working with Kauai lumber, who's obviously based in Kauai, Kauai Irrigation, Kenneth Plumbing who is from Lihue. So there are a number of suppliers and vendors and labors that are Kauai based.

Chair Mahoney: I was mentioning General Contractors.

Mr. Howard: And I understand that.

Chair Mahoney: I was mentioning General Contractors. You know there's plenty of them here, to even be consulted and considered. Ok. Well that's all I have to say.

Ms. Apisa: Kauai is Small Island with big memory.

Ms. Nogami Streufert: I have a question about the historical context. First of all, I commend you for your proposal that you would only scrap away 10 cm. at a time. So this is a very historical, archeological area rich area. But the question is if one were to, and because it is so important, if one were to add something about abiding by the Archeological Monitoring Plan as one of the Conditions, would that be a problem with that?

Mr. Schnell: That's not a problem at all. Our Archeological Monitoring Plan. So first an archeological inventory survey was done a year or so ago or maybe a little bit longer than a year. And the same archeologist that did that survey prepared the Monitoring Plan and that was submitted to the Historic Preservation Division January of this year. So I think it will be approved pretty soon and we are going to abide by the plan.

Ms. Nogami Streufert: So that will be with the plan?

Mr Keawe: I'm sorry. That was my question also was basically on the archeological survey and historical survey and I noticed that one of the trenches in the pool area, in the garden area, there was some modifications was made based on what was found.

Mr. Schnell: That's true we had to modify the design somewhat it's a subsurface feature that's underneath the courtyard now about 2 ft. underneath and so we won't dig deep in that area and there will be a monitor there when its being done.

Mr Keawe: I appreciate the sensitivity of doing that and just making sure that all the conclusions that are in this particular report as far as mitigation are incorporated and overall design concept and protocols when you are going through the construction.

Mr. Schnell: We've been very conscious of that and we have no problem doing that yes.

Mr Keawe: Sorry.

Ms. Nogami Streufert: No that's great, that was part of it. There is another question that I have your going to be demolishing the luau hut or luau building does that include all of the foundation, so there is not going to be any concrete cause it will be a more permeable area at that point, is that correct?

Mr. Schnell: Yes.

Ms. Nogami Streufert: And that was to offset the impermeable area that was going to be with the area that was going to be with the new pool?

Mr. Schnell: Correct.

Ms. Nogami Streufert: How does that work other than just a trade off because the permeable area is now going to be separated from where you are putting the impermeable courtyard or the pool lounge area and that's going to be separated by two large parking lots. So how does that drain into that?

Mr. Schnell: So I think there are two requirements going on here so, there is one requirement in the Zoning Code you can only have a maximum of fifty percent lot coverage of hard scape. So to meet that fifty percent hard scape requirement, we are adding hard scape in the courtyard area, and to offset that we are demolishing the luau building area, which is also by the way part of the Archeological Monitoring Plan. So now the drainage is a separate issue, so I mean overall the drainage will be the same amount of hard scape on the property but Terrance's team has designed a drainage system specifically for the courtyard area. And so the drainage from that area, actually there are some subsurface drainage retention chambers underneath the courtyard that will be put in to handle the additional drainage from the pavement in the courtyard.

Ms. Nogami Streufert: So this is just a tradeoff of square footage is what you are talking about?

Mr. Schnell: So there is the lot coverage requirements and there is the drainage requirements.

Ms. Nogami Streufert: So then the drainage requirements will actually be able to fulfill these Civil Engineers requirement here, Mr. (inaudible) requirement, that the drainage flow and the storm runoff will not exceed pre-development conditions. Is that correct?

Mr. Schnell: That's correct.

Chair Mahoney: Commissioner Ho.

Mr. Ho: Vertical access to the beach way from here will continue with construction? Access and parking for the public?

Mr. Schnell: Yes it will. So the one I showed you on the south side let's say, that's by the Coconut Beach project, that will remain and that's the dedicated public access so there is an easement for that, actually Coconut Beach has some different ideas too on the...but anyway, our public access will remain open, those parking spaces for the public. On the other side where the luau building is, that will remain open to accept when the luau building is being demo'd then that area is going to be close off but you can get to the north access on the side of the building. I mean the path right now is an informal path going from Aleka Loop all the way to the shoreline and it goes on the side of the luau building so there's going to be a little disruption there when that's being demo'd.

Mr. Ho: But one or two of them will be open at all times? They won't be totally closed?

Mr. Schnell: The one will be open at all times and the other one will just be closed up by the street side. But the side of building on the north will be open.

Ms. Nogami Streufert: One last question. If you were to push back the pavement on your pool by 1 to 2 ½ ft. so that it would be outside the setback area. What would be the implications for that or the consequences of that?

Mr. Schnell: We could ask Russel Chun who is the landscape Architect to respond to that.

Chair Mahoney: Just state your name for the record please.

Mr. Russel Chun: Sure. Russel Chun with PBR Hawaii landscape architect on the project. That 1 to 2 ft. is just for the boundaries of the pool mat in order to put chaise lounge chairs which is desirable around the pools and get people to walk behind it or in front of it either way was necessary and just a small amount and the way the pool is laid out proportionally to the building and the directions and then the shore line is different from that right, so that's how we have that little deviation of space that we needed to accommodate pedestrian flow.

Ms. Nogami Streufert: But if you push that back, I was looking at the diagram, if you push that back a foot 1 to 2 ½ feet I think it's where it infringes on the setback, does that really impeded the flow behind? I'm not saying in front of the pool or between the pool and the water but behind the pool to the building. If you were to decrease that by 1 to 2 ½ ft.

Mr. Russel Chun: If we were to decrease it, it would only be useful as a walk way and a lot of space that people could be sitting around the pool so if we took that away it would be turned into a walkway because the dimensions are too small, the width, yes.

Ms. Nogami Streufert: Thank you.

Chair Mahoney: Lester, did you have a question?

Mr. Calipjo: Going back to a Chair Mahoney's question about the workforce labor, I hear that you will be utilizing your materials here but he's asking about workforce labor. Are you guys be utilizing some of the labor force here instead of bringing people here from the mainland?

Mr. Howard: Yes, that's why I listed eight of the sub-contractors that I am aware of that will be using their own labor force that are Kauai based. And that is the majority of the people that will be completing the construction work in the courtyard or for the pool. I understand that the GC and honestly I do not have the information of other Hawaii based GC's.

Chair Mahoney: Yes well. The GC has a history of bring their own people and they bring'em from all over the place and we will leave it at that.

Mr. Howard: No. I understand as I-

Chair Mahoney: Yes well I don't know if you do understand this is an important issue and it's like it's happened before and time and time again somebody will come in here and they want concessions, the want concessions and they'll bring the labor force from somewhere else when there is one here. So the people that are here, the local people they have live and earn a living too. They're the ones that live here they're the ones that sacrifice, they're the ones that put up with all the construction and everything else. They're the ones that deserve jobs too! That should be a prime consideration for these projects and I'm adamant about that...I'm not a labor representative up here to be a potted plant. So that's my point, you want to do business, we want business also. We also want our labor force used too.

Mr. Howard: I understand what you are saying and I hear your point, but the only point that I was trying to make was the majority of the courtyard work is obviously the pool, that is being handled by KLC Design Builders there work.

Chair Mahoney: I understand, I understand, I think we understand each other alright. Thank you. Any other questions? Ok and thank you. Jody can you give us your conclusion and recommendation.

Ms. Galinato: Based on the information contained in the Directors' Report findings and evaluation the Planning Department concludes that the proposed development would not have any detrimental impact to the environment or the surrounding areas. The proposal is in compliance with the criteria outlined for the granting of a Special Management Area Use Permit and Class IV Zoning Permit. Additionally, the proposal aligning with the goals and policies outlined in the General Plan. The proposal does satisfy the parking requirements as outlined in the comprehensive zoning ordinance. The Planning Director reserves the right to increase parking requirements when particular uses cause unusual traffic congestion. The applicant shall implement best management practices in the development and operation of this facility. So for the preliminary recommendation based on the forgoing evaluation and conclusion as hereby recommended that Class IV Zoning Permit Z-IV-2019-10 and Special Management Area Use Permit SMA (U)-2019-4 be approved. If approved the following Conditions should be implemented: I. The proposed improvement shall be constructed as represented any changes to

structures and facility shall be reviewed by the Planning Department to determine rather Planning Commission review and approval is warranted. 2. The Planning Commission reserves the to revise add or delete Conditions of approval in order to address or mitigate unforeseen impacts the project may create or to revoke permits through proper procedures should Conditions of approval not be complied with or be violated. 3. In order to minimize adverse impact on federally listed threatened species Newell's Shearwater bird, Shearwater and other sea birds. If an external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following type; downward facing shielded lights, spotlights aimed upwards, or spotlighting of structure shall be prohibited. 4. The applicant shall develop and utilize best management practices during all phases of development in order minimize erosion, dust, and sedimentation impacts of the project to a budding properties. 5. The applicant is advised should any archeological historical resources be discovered during ground disturbing construction work. All work in the area of the archeological historical findings shall immediately cease and the applicant shall contact the State Historic Preservation Division and the Planning Department to determine mitigation measures. 6. The applicant is advised that additional Government Agency Conditions may be imposed. It is the applicant's responsibility to resolve those Conditions with the respective agencies. 7. The Planning Director recovers the right to increase parking requirements when particular uses cause unusual traffic congestion. 8. The applicant shall implement to the extent possible sustainable building techniques and operational methods for the project such as leads standards or another comparable State approved nationally recognized and concessive based guidelines standard of system and strategies which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low energy fixtures, low energy lighting, and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for building permit review. 9. The applicant shall submit a shoreline setback determination prior to issuances of building permits for the proposed work. 10. To the extent possible within the confines of the union requirements and applicable legal prohibitions against discrimination and employment. The applicant shall seek to hire Kauai Contractors as long as they are qualified and reasonably competitive with other contractors and shall seek to employ residents of Kauai and temporary construction and permanent resort related jobs. It is recognized that the applicant may have to employ non- Kauai residents for a particular skilled jobs where no qualified Kauai residents possess such skills. For the purpose of this Condition the Commission shall relieve the applicant of this requirement if the applicant is subjected anti- competitive constraints on trade or other monopolistic practices. And lastly, 11. The applicant shall obtain the necessary building permits and commence within one year from the date of approval of this application and complete construction within two years from the date of approval of the building permit.

Ms. Nogami Streufert: May I ask a question?

Chair Mahoney: Yes.

Ms. Nogami Streufert: I am sorry I forgot one question. This isn't a zone X flood are which is fine, but it's also a tsunami area, high tsunami affect area. Do you have a plan for evacuation and for safety for your guest as well as for your service people?

Mr. Schnell: So I understand that the whole strip along that coastline is in a tsunami district. I think we can maybe...Shaun our hotel manager can speak to that.

Mr. Shaun Borges: Good Morning Board. My name is Shaun Borges I'm the General Manager. We do have a crisis management plan an SOP in place for all emergency procedures. We also have had quite a bit of a scares if you will over the some with hurricanes and also the ballistic missile attack. You know we update our policies a do our trainings frequently throughout the property. So with the tsunami we do have a crisis management plan in place in case any natural disasters hit. For the safety of our guest and our team members.

Ms. Nogami Streufert: And that's been coordinated with the emergency operation center here?

Mr. Shaun Borges: Not formally, no. But I think we can always outreach onto some of our other entities again Kauai Fire Department is a big ally of ours as well so making sure we are up to date on all of our certifications and our trainings that we can do.

Ms. Nogami Streufert: But also the Kauai Emergency Management Agency.

Mr. Shaun Borges: That is correct and we were fortunately with the ballistic missile attack last year we had the Civil Air Patrol at a conference at our property who very much needed and aided us with maintaining the chaos which luckily for our property was very calm and collected especially with a lot of leaders that were ex-military. Probably couldn't say that with some of the other hotels. But it is a major focus of ours and also Marriott is our brand so they require a lot of training in those regards as well and procedures in place.

Ms. Nogami Streufert: That's good to know because some of us do frequent your hotel and restaurants so that would be good to know you've got a plan in place.

Mr. Shaun Borges: Yes.

Chair Mahoney: Any other a? Ok. So a-

Ms. Nogami Streufert: I move to accept the recommendations with few amendments and would suggest two amendments right now for Condition number 5. The applicant is advised that should any Archeological Historical resources be discovered during any ground disturbing construction work etc. etc. etc. state specifically that they would be working with the approved Archeological Monitoring Plan AMP on the details. Because I think that because it is such a historical area and I am not the Hawaiian cultural representative on this committee but it seems to me that is something that is important for all residents and guest too because it makes it more, much more complete experience for the guest at the same time. But it also preserves some of our historical artifacts. And the second one would be for number 6. It says the applicant is advised that additional Government Agency Conditions be imposed. Something that would indicate that the current Conditions or the current concerns that the agencies have already stated will be addressed and before completion of the project. And I have not formulated in terms of exact wordage but that would be the intent.

Mr. Hull: A...did you have any particular agencies?

Ms. Nogami Streufert: All agencies that have expressed concerns that we've got right now with all the...for example, the Engineers and the runoff into the ocean, the one with the fire protection, to ensure that's not just in compliance but that it is actually safe for everyone. But I don't only want to specify those because Department of Health also have something with water and so but this says additional government agencies. Additional government agencies does not included.

Mr. Hull: All the ones that have comments in the application are required to do building permit reviews. Ok so what's the standard in general applications is because there are certain agencies that have automatic reviewing powers over a proposal. Department of Health, Public Works, Fire Department, Water Department, Building Division, Engineering Division. They get there their stab at the apple during the Building Permit Review. What the Department generally do is those agencies that comment, that do not have Building Permit Review authority those are the ones we generally fold into the a recommended approval that is why you see the SHPD Condition in there because the SHPD doesn't have actual automatic Building Permit review. That's kind of what I am getting at is there additional agencies you are concerned about that don't have Building Permit authority?

Mr. Courson: Can I ask a question of the Department? When you say additional, do you mean additional on terms of time and like in the future or do you mean additional as in besides the Planning Department? Because what I think the Commissioner is concerned about is this may not capture what is already been said because you're using the word additional to mean in the future. But what I think what you're saying here is besides the Planning Department.

Ms. Nogami Streufert: In addition to the current concerns that are already listed.

Mr. Courson: Right, so I don't think this is saying, this is saying

Mr. Hull: No, no, no. The Condition here is saying additional in the future, right, and so what I was just explain that just by design of the building permit the agencies that have commented all of the with the exception of SHPD are going to get their review process during BP review.

Ms. Nogami Streufert: But that's during the permitting process? How about after the building has been, has been...that's during the permitting not during the construction or completion process is that correct?

Mr. Hull: Yes. But so the Building Division does onsite inspections during the construction process to ensure that it's meeting the code as building up to and then ending at certificate of occupancy essentially.

Ms. Nogami Streufert: And that includes all of the Department of Health, Department of Fire, Department of etc. etc. etc.

Ms. Galinato: It would include the ones that we had the comments from. If you wanted to address the Kauai Emergency Management Agency. On another hotel project we had, we did have a condition that the applicant submit their Emergency Management Plan Prior to building permit issuance that covers it.

Ms. Nogami Streufert: Ok. I have a suggestion for number 6. If the second line could say, it shall be the applicant's responsibility, I'm not sure shall or will? I am not an attorney so I never know when to shall and will it. It shall be the applicant's responsibility to resolve all current requirements those conditions, resolve all current and future conditions with respective agencies. Would that work?

Mr Keawe: So you are adding current and future?

Ms. Nogami Streufert: Right.

Ms. Galinato: Resolve all current and future requirements?

Ms. Nogami Streufert: For current and additional because you've got additional in the front and top sentence.

Ms. Galinato: It shall be the applicant's responsibility to resolve all current and additional requirements with the respective agencies.

Ms. Nogami Streufert: And for number 5. Something about working with.

Ms. Galinato: I put the last sentence on Condition 5. The applicant will follow approved Archeological Monitoring Plan.

Ms. Nogami Streufert: Approved and agreed upon I think.

Mr. Hull: So the Department will treat those as friendly amendments and amend our report to reflect as such.

Chair Mahoney: The applicant are you in concurrence with the amendments

Mr. Schnell: I think so it's fine.

Mr Keawe: So do we have a motion already?

Mr. Courson: That was the motion, it hasn't been seconded yet.

Mr Keawe: Second.

Chair Mahoney: OK. It's been moved and seconded. Is there any further discussions. Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 6:0. Thank you.

Mr. Schnell: Thank you very much.

The Commission recessed this portion of the meeting at 11:27 a.m.

The Commission reconvened this portion of the meeting at 11:36 a.m.

COMMUNICATIONS (For Action)

There were no communications for action.

COMMITTEE REPORTS

HEARINGS AND PUBLIC COMMENTS

New Agency Hearing

Class IV Zoning Permit Z-IV-2019-11, Use Permit U-2019-8 to facilitate improvements to the existing emergency power facility and Variance Permit V-2019-3 to deviate from the maximum height and building setback requirements within the Residential zoning district on a parcel located along the eastern side of Kuhio Highway in Lihue, situated approx. 450 ft. east of the Kuhio Highway/Kuene Road intersection, further identified as 3-3420 Kuhio Highway, Tax Key Map: 3-7-001:030, and affecting a portion of a larger parcel approx. 43.927 acres in size = Wilcox Medical Center. [Director's Report received 1/22/19].

Mr. Hall: Next order of business is agenda Item is F. 2.b. Class IV Zoning Permit Z-IV-2019-11, Use Permit U-2019-8 to facilitate improvements to the existing emergency power facility and Variance Permit V-2019-3 to deviate from the maximum height and building setback requirements within the Residential zoning district on a parcel located along the eastern side of Kuhio Highway in Lihue, situated approx. 450 ft. east of the Kuhio Highway/Kuena Road intersection, further identified as 3-3420 Kuhio Highway, Tax Key Map: 3-7-001:030, and affecting a portion of a larger parcel approx. 43.927 acres in size. The applicant is Wilcox Medical Center and Chance is our Planner on this.

Staffer Mr. Chance Bukoski: Good afternoon Commissioners, Chair and Commission. Before I begin I would just like to notify you guys that I will be summarizing this report.

Mr. Bukoski read the Director's Report for the record (on file with the Planning Department).

Chair Mahoney: Thank you. Is there any questions for the Planner by the Commissioners?

Ms. Nogami Streufert: There's a requirement or there is a need for a transformers, additional transformers. Does that come in as separate approval process or does is it automatic with this?

Mr. Bukoski: It's within the application itself so it would be with the improvements adding the generators and also with the transformers itself within this application. I am not too sure on or if the applicant wants to speak on the KIUC transformers because that was part of the application.

Mr Keawe: So no just to reiterate. So, Chance, this is all inclusive application so the building up of the improvements would include the addition of the transformers which KIUC would provide or someone would provide as part of the application.

Mr. Bukoski: Yes. It's part of the application as a whole.

Mr Keawe: So the approvals could both and would not necessitate a separate permit?

Mr. Bukoski: This is a bundled deal.

Chair Mahoney: Ok. Can you get the applicant up? Is there any representative for the applicant? Please come up and state your name please.

Mr. Roland Resurrection: My name is Roland Resurrection. I'm a project manager with Wilcox Design and Construction and we brought along our Architect.

Ms. Marni Murdock: Hi. I'm Marni Murdock with KYA Inc. Project Architect.

Chair Mahoney: Is there some questions for the applicant by any of the Commissioners?

Ms. Nogami Streufert: What the building of the second story above the first story where you got the three transformers or two generators right now. I presume there are some plans so that there is no disruption of services while the building is going on, is that correct?

Mr. Resurrection: Yes, so that is correct. The reason for the second story is that we can keep the existing generators intact, operational, and then we build the second floor with the three 1000 kW generators. Once we are done with completing that construction we would start doing transfers from the old system to the new system. Definitely there will be outages in certain sections of the hospital and certain areas that have 24/7 patients. We would provide temporary power for those areas so definitely it's a task in itself but we have done it in the past with another facility but there will be temporary power to areas so that it limits outages totally in certain areas of the hospital.

Chair Mahoney: Commissioner will you be getting rid of the old generators, the two generators or will you be using that as backup to the three generators that you have now?

Mr. Resurrection: No. So part of the project is removing those older generators when completed and part of that space is actually a replacement of a new normal switch gears and so we would build the second floor and get the emergency system up and running but we would then remove the old generators to make room for the new normal switch gears to get installed.

Chair Mahoney: Commissioner Keawe.

Mr Keawe: I had a couple of questions having to do with insulation and silencers. I think the report mentioned something about 55 dBA which is a Department of Health guideline. You feeling comfortable that can be with all the new improvements and the larger generation equipment that it could be achieved? I mean I think you know where you are and you got a whole residential communities close by. So that would be a concern.

Ms. Marni Murdock: Yes, correct. And we have on our team an Acoustical Engineer who has studied that prior to this point of where we are with the project. We did a study and we looked at different scenarios and how to achieve the 55 dBA. So part of the reason why the building is the height that it is because of the silencers they are very large in the building and then they are on the intake and on the radiator side and we needed both to achieve the 55 dBA.

Mr Keawe: OK. Yes next question has to do with the Variance, height Variance and distance Variance so, what was it 12.8 ft. above and that would be necessitated by trying to make sure you had enough room for those silencers, is that correct?

Ms. Marni Murdock: Yes.

Chair Mahoney: Any further questions?

Ms. Nogami Streufert: No questions but I would like to commend you for doing this now before we need something like this because all of Kauai depends on Wilcox Medical Center and I know we certainly have used it. So thank you.

Chair Mahoney: As the applicant is there anything else you would like to add? Ok at this juncture can we get the recommendation from the Planner?

Mr. Bukoski: Certainly Chair. A based on the forgoing findings it is here by recommended that Class IV Zoning Permit Z-2019-11, Use Permit U-2019-8 and Variance Permit V-2019-3 be approved and subject to the following 8 Conditions. Chair would you like me to read those conditions for you?

Chair Mahoney: Yes Please.

Mr. Bukoski: Condition 1. The proposed facilities shall be constructed as represented any changes to said structures and or facilities shall be reviewed by the Planning Department to determine rather the Planning Commission review and approval is warranted. Condition 2. The applicant shall develop and utilize Best Management practices to ensure that the operation of this facility does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal. Condition 3. The applicant shall resolve and comply with all the agency requirements as recommended in the permit application review including but not limited to the permit requirement for the County DPW Engineering Division, water requirements for the County Department of Water and Regulations involving environmental concerns as administered by the State Department of Health. 4. The applicant is advised that prior to the

construction and or use additional government and agency Conditions may be imposed. It shall be the applicants' responsibility to resolve those Conditions with the respective agencies. 5. The applicant shall implement to the extent possible sustainable building techniques and operational methods for this project such as leadership and energy and in environmental design. Leads standards or another comparable State approved nationally recognized and a consensus based guideline standard or system and strategies which may include but not limited to recycling, natural lighting, extensive landscaping, solar panels, lower energy fixtures, lower energy lighting, and other similar methods of techniques. All such proposal shall be reflected on the plans submitted for the building permit review. Condition 6. To the extent possible within the confines of the union requirements and the applicable legal prohibitions against discrimination and employment, the applicant shall seek to hire Kauai Contractors as long as they are qualified and reasonably competitive with other Contractors and seek to employ residents of Kauai in temporary construction and permanent resort related jobs. It is recognized that the applicant may have to employ non Kauai residents for particular skilled jobs where no qualified Kauai residents possess such skills. For the purpose of this Condition the Commission shall relieve the applicant of the requirement if the applicant is subject to anti-competitive constraints on trade or other Monopolistic practices. Condition 7. The applicant is advised that should any archeological or historical resources be discovered during ground disturbing construction work and all work in the area of the Historical Archeological finding shall immediately cease and the applicant shall contact the State Department of Land and Natural resources Historic Preservation Division and the Planning Department to determine mitigation measures. And lastly, Condition 8. The Planning Commission reserves the right to add or delete Conditions of approval in order to address and mitigate unforeseen impact this project may create or revoke the permits through proper procedures should Conditions of approval be violated or adverse impacts created that cannot be properly addressed. And that concludes my recommendation.

Mr. Hall: The Department would, given concerns expressed at the last agenda Item. We would amend Condition 4. To state that the applicant advised that prior to construction or use of additional government agencies may be imposed. It shall be the applicant's responsibility to resolve current and future Conditions with the respected agencies.

Ms. Nogami Streufert: I move to accept the recommendation of the Planning Department to approve the Class IV Zoning Permit Z-2019-11, Use Permit U-2019-8, and Variance Permit V-2019-3.

Mr Keawe: Second.

Chair Mahoney: It's been moved and seconded. Is there any further discussion? Hearing none. All in favor signify by saying aye. (Unanimous voice vote) Opposed? (None) Motion carries 5:0. Thank you very much. Thank you for your patience.

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-aB, 4444 Rice Street, Lihue, Hawaii 96766 on Tuesday, March 12, 2019.

Mr. Hull: That concludes our New Business Items. The Commissions receipt of topics for future meetings concerning applications that the Realtor Division is working with but have not been completely accepted at this point. If there's questions on that or if there is any desire for the Department to provide any further topics for future meetings. Ok I leave it to you folks.

Mr. Ho: Kaaiana.

Mr. Hull: Yes sir.

Mr. Ho: Can we comment on now on the TVR's? The TVR enforcement?

Mr. Hull: The Department can provide the Commission with a briefing on TVR enforcement.

Mr. Ho: Can we just ask general questions now?

Chair Mahoney: It's not on the agenda.

Mr. Hull: Being it wasn't agendized. But if it's the Commission's request? I mean quite honestly, I was at the Kauai Council and their Planning Committee Chair Chock had requested give an update on the briefing on our TVR and enforcement policies and practices which we will be doing and we can provide you folks as well.

Mr. Courson: To be specific. You could ask the questions, you just couldn't get into a discussion about it. So if for some reason you wanted to pose the question now rather than

Mr. Ho: Can I give him just the talking points and ask him the questions as he wants to answer later?

Mr. Courson: As long as it doesn't prompt a discussion amongst the 5 of you.

Mr. Ho: One issue is Governor Ige said that he would release TAT money to the County in return he wants active enforcement by you guys on the TVRs. That's one of the questions.

Mr. Hull: Can I respond Nick or that's something I'd have to come back later one?

Mr. Courson: So the Sunshine law specifically addresses their discussions amongst themselves it's supposed to be agenda'd. So if they did not have quorum they could still receive testimony. The way I read is that we cannot enable a discussion amongst them so I'm just concern that your response and the prompt another comment.

Chair Mahoney: I think we should defer this to another meeting when...Let's put it on the agenda and that way they'll be give and take for everyone and anybody that wants to get

involved in the discussion and you will probably get a more thorough answer to your questions, just as a suggestion.

Mr. Courson: Yes. So you can give the Department a heads up on the side, I know I appreciate a heads up because I am fully prepared.

Mr. Ho: Can I just, as talking points, can I just write him a note? No, that's out?

Mr. Hull: We can communicate off line.

Mr. Courson: Sunshine Law doesn't prohibit you from speaking with the Director or the Clerk, it's just your fellow Commissioners.

Mr. Ho: Ok.

Ms. Nogami Streufert: Can we get an update on Coco Palms and (Inaudible).

Mr Keawe: Wasn't there, there was supposed to be something happening in January with regard to Coco Palms? We need an update.

Chair Mahoney: It obviously didn't. Let's work on getting it on the agenda and I will personally speak to the Directermite and help them support because he has been very busy too.

Mr. Hull: Seeing no other issues that would conclude the Agenda.

Ms. Nogami Streufert: I make a move here.

Mr Keawe: Seconded.

Chair Mahoney: OK. It's been moved and seconded. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 5:0.

Chair Mahoney: OK. All in favor signify by saying aye. (Unanimous voice vote) Opposed? (None) Motion carries 5:0. Adjourned. Thank you.

ADJOURNMENT

Chair Mahoney adjourned the meeting 11:56 a.m.

Respectfully submitted by:

A handwritten signature in black ink, appearing to read 'Arleen Kuwamura', written over a horizontal line.

Arleen Kuwamura,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.